

BOARD OF POLICE COMMISSIONERS

Minutes of the Regular Board of Police Commissioners Meeting Thursday, August 28, 2003

The regular meeting of the Detroit Board of Police Commissioners was held on Thursday, August 28, 2003, at 3:00 p.m., at Police Headquarters, 1300 Beaubien, Rm. 328-A, Detroit, MI 48226.

ATTENDANCE

Board Members Present

Willie E. Hampton
Arthur Blackwell, II
Erminia Ramirez
Edgar L. Vann, Jr.
Megan P. Norris

Department Personnel Present

Chief Jerry A. Oliver, Sr.
AC Tim Black
Cmdr. Leo Powers
Cmdr. Robert Dulap
Lt. Plummer
Lt. Ray Nolan
Sgt. Debbie Jackson
Sgt. Eleanor McBurrows
PO James Watson
PO Irvette Reed
Dir. Elise Scott

Board Staff Present

Dante' L. Goss, Executive Director
Denise R. Hooks, Attorney/Supv. Investigator
Arnold Sheard, Interim Chief Investigator
E. Lynise Bryant-Weekes, Personnel Director

RECORDERS

Jerome Adams
Felicia Hardaway

OTHERS PRESENT

Ms. Walters
Ron Scott
Jennie & Kitty Whitfield

1. CALL TO ORDER

Chairperson Hampton called the regular meeting of the Detroit Board of Police Commissioners to order at 3:15 p.m.

2. APPROVAL OF MINUTES

- **Thursday, August 21, 2003**

MOTION: Commissioner Hampton made the motion to approve the Minutes listed above.

SECOND: Commissioner Norris seconded the motion.

VOTE: All in attendance voted in the affirmative.

3. REPORT FROM THE CHAIR

RESOLUTION HONORING POLICE OFFICER JAMES C. JONES

WHEREAS Police Officer James C. Jones of the Eleventh Precinct, retired on August 8, 2003, from the Detroit Police Department after twenty eight (28) years of exemplary and dedicated service to the citizens of Detroit, and

WHEREAS Police Officer Jones was appointed to the Detroit Police Department on January 23, 1978 and

WHEREAS Upon graduation from the Detroit Police Academy, Officer Jones began his illustrious career at the Mini-Station Unit, and

WHEREAS As a police officer with the Department, his assignments included the Tenth Precinct, Vice Enforcement Unit, the Mini Station Unit, the Records and Identification Section, and the Eleventh Precinct, where he remained until his retirement, and

WHEREAS During his career with the department Office Jones amassed a World Class Service Award and four (4) Chief's Merit Awards, one (1) Citation and numerous letters of commendations from supervisors and citizens

WHEREAS Police Officer Jones is widely respected as a man of honesty, integrity and regarded throughout the law enforcement community as the consummate professional.

NOW, THEREFORE BE IT

RESOLVED

That the Board of Police Commissioners, speaking for the citizens of the City of Detroit and the Detroit Police Department acknowledge
Police Officer James C. Jones for loyal and dedicated service to the Detroit Police Department and the citizens of Detroit. Police Officer Jones actions were in accordance with the highest standards and traditions of the Detroit Police Department.

We salute and congratulate you, Police Officer James C. Jones.

DETROIT BOARD OF POLICE COMMISSIONERS

/s/ Willie Hampton
Chairperson

/s/Arthur Blackwell
Vice Chairperson

/s/Megan P. Norris
Commissioner

/s/Edgar L. Vann, Jr.
Commissioner

/s/Erminia Ramirez
Commissioner

MOTION: Commissioner Hampton made the motion to adopt the Resolution.

SECOND: Commissioner Vann seconded the motion.

VOTE: All in attendance voted in the affirmative.

Chairperson Hampton stated the following Resolution for James C. Perkins has been amended and approved last week:

**RESOLUTION HONORING
REV. JAMES C. PERKINS**

WHEREAS

Rev. James C. Perkins is a resident and community leader in the City of Detroit; and

WHEREAS Rev. Perkins has been the pastor of the Greater Christ Baptist Church, located in the Seventh Precinct, for the past 22 years; and

WHEREAS Rev. Perkins serves both the church organization and the surrounding community by instituting a Counseling Center, ministries for youth, adult singles and couples, Fiscal Educational Programs, Academic Recognition for children and chaired the 1997 National African Family Ministry Conference; and

WHEREAS Rev. Perkins serves on the Board of Directors for the Detroit Design Collaborative, as a member of the St. John Health System Community Advisory Council, and as a member of the Detroit Chapter NAACP; and

WHEREAS Rev. Perkins, responding to the educational needs of young urban African American males, instituted the Benjamin E. Mays Academy in 1993; and

WHEREAS Rev. Perkins founded the Fellowship Nonprofit Housing Corporation as a vehicle for community economic development,

NOW, THEREFORE, BE IT

RESOLVED That the Detroit Board of Police Commissioners, speaking for the citizens of the City of Detroit and the Detroit Police Department, acknowledges the generous spirit of Rev. Perkins. His unselfishness and dedication to improving the quality of life for all citizens in his community and throughout the City of Detroit merits our highest regards.

We thank and congratulate you, Rev. James C. Perkins.

DETROIT BOARD OF POLICE COMMISSIONERS

/s/ Willie Hampton
Chairperson

/s/Arthur Blackwell
Vice Chairperson

/s/Megan P. Norris
Commissioner

/s/Edgar L. Vann, Jr.
Commissioner

/s/Erminia Ramirez
Commissioner

4. SECRETARY REPORT – EX. DIR. GOSS

CITIZEN COMPLAINTS RECEIVED

	<u>This Week</u>	<u>Year to Date</u>
Weekly Count of Complaints:	23	792
Weekly Count of Allegations:	38	1,647
Arrest	0	70
Demeanor	13	523
Entry	0	28
Force	2	130
Harassment	3	58
Procedure	14	568
Property	0	77
Search	1	47
Service	5	145

Pending Cases

As of July 23, 2003, the Office of the Chief Investigator (OCI) has a total of **650 pending cases**, which include **225 cases** with an age of 0-45 days, **17 cases** with an age of 46-60 days, **117 cases** with an age of 61-90 days, and **103 cases** with an age of 91-120 days, **144 cases** with an age of 121 days – 6 months, and **44 cases** with an age of 7-9 months.

2002

During the past week: 31 **Year to Date:** 711

5. CHIEF'S REPORT

DETROIT POLICE DEPARTMENT
MIND'N OUR BUSINESS

Board of Police Commissioners

The Detroit Police Department's mission is building a safer Detroit through community partnerships. Therefore, the following enforcement actions were conducted during the week of August 20th-26th, 2003:

ORGANIZED CRIME AND GANG DIVISION

The Conspiracy Intelligence, South-East, North-West and Vice Sections conducted three enforcement actions that resulted in (2) felony and (21) misdemeanor arrests. These enforcement actions resulted in the confiscation of 2.5 grams of marijuana, 31.5 grams of cocaine, and 19 grams heroin for a combined street value of \$160,210.00. \$2,585.00 in U.S. currency, and (34) game tickets were confiscated from these enforcement actions.

SEVENTH PRECINCT

On August 23, 2003, officers of the Seventh Precinct were assisting with traffic at the intersection of Mack and Holcomb, and observed a male bending over with a gun in his waistband. Upon further investigation of the subject it was determined that he did not have a permit to carry a firearm. The officers attempted to place the subject in custody. However, he resisted arrest and attempted to take the officers' weapon. The subject was subsequently arrested without incident and transported to the Seventh Precinct.

TENTH PRECINCT

On August 21, 2003, officers of the Tenth Precinct responded to a "Breaking & Entering Alarm," with motion inside. Upon arrival at the location the officers heard a noise from the roof. The officers secured the perimeter of the building until the arrival of the Detroit Fire Department. Using a ladder provided by the fire department, the officers went up on the roof and placed the subject in custody for "Breaking and Entering Business." The subject was also identified in several other recent burglaries.

Chief of Police Jerry A. Oliver, Sr.

6. OTHER BUSINESS

Chairperson Hampton stated Atty. Ninowski would like to address the Board regarding a suspension without pay that we talked about at the last meeting.

Atty. Ninowski stated I understand that there was some discussion last week, relative to suspensions without pay, so I thought that I would give a very brief discussion today, regarding the same. The Board of Police Commissioners derives its authority to suspend members of the Detroit Police Department without pay under the City Charter (Article 7.1107, Section 3). And your authority to suspend members without pay is also recognized by the respective collective bargaining agreements, as well as the General Orders and the directives of the Detroit Police Department. And the Chief's authority with

respect to suspending the duty status of a member with or without pay is also derived from the same materials as yours.

In 1979, in the Detroit police officers collective bargaining agreement a paragraph was inserted, which we referred to as the under normal circumstance provision and under that, that is the provision by which we bring forth petitions regarding suspensions without pay to the Board of Police Commissioners. That paragraph in essence reads:

“Under normal circumstances in the average case a suspension without pay will not occur pending the disciplinary process.”

Since 1979, there have been a series of arbitration decisions interpreting that provision and the exception. What is the exemption to normal circumstance? The first decision was in 1980, Roger Grover, the Arbitrator Roumell held that if an officers conduct is such that he /she can no longer perform the function of the police officer then a suspension without pay is warranted. In 1985, the arbitration concerning Ronald Wilson was decided by Arbitrator Roumell and a second exception to the under normal circumstance provision was delineated and that was if an officer is charged with a felony. There have been other exceptions that have warranted arbitration decision throughout the years, but it is really the 1985 decision that I think that was in question last week. The most recent arbitration decisions and more specifically, Terrance Watson, which was decided in November of 2002 and Anthony Johnson that was just decided. The arbitrators have recognized that is the law between the parties that when an officer is charged with a felony that a suspension without pay is warranted.

As a consequence, when the Department brings fourth petitions to the Board, there is an outline of the officer's conduct as well as the elements of the particular offense charged. Now, it's not as detailed of a description of what occurred as when we know the union is going to contest the suspension without pay. In having said that, if you have a petition before you and you feel that you don't have enough facts and that there is more information that you need, please advise the Department and we will be more than happy to furnish you with any information.

Comm. Blackwell, II asked under the first decision or the arbitrator's ruling under the Grover decision of 1980, normally you wouldn't suspend the status of a person under normal circumstances, but they said unless the behavior was unbecoming of a police officer?

Atty. Ninowski stated unless the conduct was such that that officer could no longer feasibly perform the duties of a police officer.

Comm. Blackwell, II stated that judgment is obviously being made primarily by the Chief and then in concurrence, if the Board concurs with that particular assessment?

Atty. Ninowski stated yes.

Comm. Blackwell, II stated because obviously in some cases he may feel that we may or may not concur.

Atty. Ninowski stated correct.

Comm. Blackwell, II stated in the case of Ronald Wilson, in this particular case, all of the parties have basically said that they recognize now that if the union...if someone is charged with a felony in that particular case then a suspension with pay is warranted. Obviously, the Chief still has to make a decision to bring that particular thing forward.

Atty. Ninowski stated yes, the Chief still needs to make a decision, correct.

Comm. Blackwell, II asked then technically we do as well?

Atty. Ninowski stated correct.

Comm. Blackwell, II stated I guess what the discrepancy is in the first case...I mean he brings those issues sometimes and obviously based on what some of the attorneys for the unions have argued here before protocol, procedures and best practices. Many times those situations if they weren't a felony were not, necessarily brought to this Board prior to this particular chief coming and being handled that way. And that this Board recognizes raising the bar and now we recognize that the Chief sees that behavior may be unbecoming a police officer then non-felony charges many times are being suspended with pay probably more than in the past.

Atty. Ninowski stated yes, most definitely.

Comm. Blackwell, II stated which is kind of shift or a change in the way things were prior to this new administration.

Atty. Ninowski stated yes.

Comm. Blackwell, II stated the only thing that I said to the Board was that if the Union was not challenging the issue and the Chief feels this is a serious issue being charged with a felony, but it is still pursuant to the Charter, General Orders and Rules and Regulations. He asked does it still have to come to the Board?

Atty. Ninowski stated yes.

Comm. Blackwell, II stated whether it being just a perfunctory matter, it seems to me that it shouldn't come because I don't like to just vote on something and it is already a done deal and I think that was the issue. Well the other issue is that we go through the motions and make a conscious decision whether we want to contravene or not contravene a particular issue. We still have the ability to do that when charged with a felony, but it seems like the union and everybody is on board with that. So, the issue I have is that we sit up here as a deliberate body, are we really just rubberstamping the decision or do we really feel that every decision that is made in that particular matter is correct from the standpoint of them being suspended without pay? That was the basis for asking those questions.

Atty. Ninowski stated in any court when a matter is uncontested absent and accounting of civil damages or something such as that, the court certainly can ask questions to make sure that there is something behind what's happening and that is really how I view you, if that makes any sense. In civil litigation if there is an action against me and I fail to appear in court, the court is going to grant a default judgment. I guess that I equate, the suspension without pay hearing to that, if the union does not contest the petition certainly you have the obligation to make sure you understand what it is that the Department is asserting and if you need more information I think that information should be provided to you by the Department. But if it is not contested by the union there would really be no issue.

Comm. Blackwell, II stated I would agree with that assertion except in the other cases when the union does come, we always agree with the union anyway, basically or most of the time. So I am saying normally courts don't agree with anybody 100% of the time, so I don't know if I could just...If we take that cookie cutter and look at that that may not be a good example cause if that is the case, then I would say let me act more like a court and be more diligent in a suspension without pay for misdemeanors. Basically, what we are trying to do is work with the Chief because we believe he is in a position to have more information. The fact of the matter is, we are a civilian review authority and it is our job to look over these things. Since everybody is saying the union is fine, in a way we're just kind of saying we moved the receiving file because we are not really deliberating on anything, well not really....

Atty. Ninowski stated I didn't mean to say...I was trying to give you an example by using court and I understand that you are a civilian review board and I think in many respects that is great because you can use your common sense and applying whatever you think needs to be done to a particular petition. I strongly think that you have independent judgment that if a petition is brought before you and have you questions regarding the substance of that petition and if the

Department is made aware of that then that information should be furnished to you. I don't know if that answers your question.

Comm. Blackwell, II stated in a way it kind of does. Because the way that these are generally presented with the issues when it is a felony charge, it is a lot less information than in the other cases. So any information that we would want to know we would have to have it in enough...we get our agendas dropped off on Tuesday or Wednesday, it is just the matter of it being reviewed. I believe in not being redundant and not wasting time. I would rather say to the union, I rather extract myself from the issue of having to vote at all if you all don't contest it and then it is a done deal. The Chief decides that this issue is going to be a suspension without pay based on a felony charge and then I am done. When it comes in front of me...I really want you to understand that we are supposed to be diligent in our oversight, so what you are saying is, but why do you want to get involved if the union doesn't even object to it.

Atty. Ninowski stated no, that is not what I am saying.

Comm. Blackwell, II stated you used the example of the court and saying if a person doesn't show up to court it is a default judgment it doesn't necessarily say go to the guilt or innocence but nobody is contesting it. He asked is that what you said?

Atty. Ninowski stated yes, I did say that. But I also said that I think if you have some issues with respect to the substance of the petition that is brought forward, you need to let the Department know that so that we could provide you with further information so that you can make a decision.

Comm. Ramirez asked so would we contravene and request that information?

Chairperson Hampton asked or hold it in abeyance?

Comm. Ramirez asked or like Comm. Blackwell, stated that we do give these...

Atty. Ninowski stated I think Ms. Hooks can probably address your procedural issues at this point.

Atty. Hooks stated in response to Comm. Ramirez if there is a question or you feel that you need some additional facts or if there are procedural questions, then I would suggest that the Board could contravene at that time, request that additional information and once you get it then make your decision. Yes.

Comm. Norris stated we have actually done that on one occasion that I could think of that we sort of contravened but without prejudice to bring it back if they felt that they could make the showing that is concerning us. The other thing that I would say to Comm. Blackwell, is that while it is true that pretty much

everybody agrees that pretty much of all of the time the felony ones don't get challenged. We have had at least one since I have been here, where the union did challenge on a felony charge and we did not contravene it, we upheld it.

I think procedurally bringing the suspension to us is a trigger point in the process, until the suspension is brought to us it doesn't really exist. The union doesn't have anything to fight until they know it is coming to us and there have been cases where a suspension has not be ultimately brought to us and we have one like that right now. I think that part of the process is that is how everyone knows that it is really happening when it comes to us. Some they fight about and some they don't fight about. But until it comes to us, it is a piece of paper that hasn't been put into effect yet and that is just how the pages are worked.

I agree with Comm. Blackwell, that I wouldn't have any problem charter wise if it said that if nobody contest we defer to everybody else. We would have to do something with the Charter to do that, but that wouldn't trouble me a bit. I would be really hard pressed to imagine us contravening something that the union is not seeing fit to fight. Maybe we could figure out a way to streamline that process, but given the Charter the way it is currently written that is the way they all come because until they come they aren't suspended.

Atty. Hooks stated that is correct.

Comm. Blackwell, II stated I think it gets back to what we have said initially with this particular Chief on the issues of suspension without pay as it relates to non-felony charges. The union stood up on many of occasions and objected and on an occasion we have contravened. Generally, we have agreed that is very important to the integrity and the uniform of the police department to improve the behavior and you have gotten up and argued very effectively as to why that is important. I think in terms of being a civilian board, the public depends on us to make sure about all of these that are going on that officers and others are getting a fair shake. The issue is if the union (the people that standup and defend or fight on behalf of the officers) is saying on felony charges we don't contest it based on the 1985 arbitration decision.

I think the thing that I am interested in is not so much not fighting on this particular issue, but sometime next year maybe trying to put particular language forward to the Charter like this or like meeting every week because I think you create a Board in 1973 and the first substantive change was last week or last month and the first change into the manual took 30 years. I think our job is to make sure that we try to make this thing more effective and better. I would rather...than just waste each other's time, it would be better to give the power to the Chief that we want to give to him and let him do his job and the stuff that comes to me, I am going to do my job.

I only ask those questions because I have never heard your story on how all of this stuff works and now that I have done it, this is good information, and it helps me as a Commissioner in terms of rules of the policy maybe we need to make it better and I have said that to the Chief. We cannot try to be more efficient and proficient.

Atty. Ninowski stated thank you.

Atty. Hooks stated we know that the Charter goes back some decades and with the civilian oversight board being a public body that maybe one of the intents or the thoughts was that by bringing the suspensions to the Board the public could hear what was going on in the Department. Even though it may have reduced it to a rubberstamping type of role when it comes to felonies because of the contract negotiations over the years, I think that still the public was made aware of what was going on in the Department, what types of charges and so forth were being brought against officers. Maybe we need to somewhat explain the way that we are looking at this right now. I would think played a role in the bringing forth the suspensions as well.

Chief Oliver stated I think there are some opportunities we have in these meetings to educate the public that we probably don't exploit and that we probably should in terms of educating them about decisions that are being made within the Department or that effect the Department that are really controversial. The arbitrators are making some decisions that will for years hamper this Department and could prevent us from getting to the level that all of us at this table want us to get to. At times we need to review arbitrator decisions, we need to talk about what next on some of these arbitrator decisions by people who have no responsibility and no accountability to the impact to the decisions that they make. They are not held accountable, they make decisions and I don't know where they go and I don't know where they come from, but I know that they do not live daily of the consequences of the decisions. I think it is important for citizens to know sometimes why the services are impacted by some of the arbitrator decisions that are made. We have a few of those coming down the pipe right now that I think are really unfortunate and will be decisions that will impact the Board in which way the Board does their job. I would like to have the opportunity at times to present those kinds of cases to the Board and then use these sessions to really talk about helping with policy formations and how we will deal with some of these issues.

Chairperson Hampton stated maybe the Policy Committee can review some of these concerns in regards to meeting less, but more effectively without short changing the public about information that is needed to make an intelligent decision.

Comm. Norris stated if we want to meet less we would have to change the Charter and it would be very difficult thing to do.

Comm. Blackwell, II stated I think if we are talking about the public...the real participation comes when we go out in the community. Primarily, I would say 75% of the people here are staff, police officers and etc. Maybe we need to meet in the community in all of our meetings so that the public could get more involved.

Chief Oliver stated I was not here the last time and I don't know if we had a chance to talk about the black out.

Comm. Norris stated we have not talked with you about the black out, but we commended the Department last week when you were not here.

Chief Oliver stated I think there is commendable activity certainly. Since the black out the members of the media are trying to turn something that was a victory into a defeat by trying to use words with baggage to describe Detroit. None of those things happened. We had some breaking and entering and a few home invasions.

Comm. Blackwell, II asked the number of B&E's on a normal night was it low, high or the same?

Chief Oliver stated we will have those numbers here soon. I was hoping that we would have the report by this meeting and we some good reasons as to why we aren't releasing those numbers. After the fact, people came to work the next day or to their businesses and reported that they had a burglary or they did something to my business. We do have a spike of reported B&E's and other property crimes. Now those are preliminary complaints, it does not necessarily mean that they have been investigated and verified. The difference between a preliminary complaint and one that has been verified is very different.

Comm. Vann stated that is the same issue that I raised last week in your absence. Unfortunately, it is our own local media in every instance. Normally, the national media that comes in have a completely different look on our city than even the media that are often here.

Comm. Norris stated last week we had communication from the audience and every single person commended the Department, the citizens and the City for the behavior that people are very proud of.

Comm. Blackwell, II gave examples of past incidents that ended in violence.

Chief Oliver stated in response to the editorial in today's paper in regards to the U.S. Attorney and the Wayne County Prosecutor Mike Duggan, we do suspend people who are charged with felonies without pay. That is the extent of what we

have done. AC Black has Internal Affairs and the Professional Accountability Bureau review the files of 17 officers that were indicted.

Comm. Vann stated I was really disturbed by the...of no evidence. I could handle it a little bit better if the Prosecutor said that we looked at the evidence and we don't think that it rises to the level of, or we think that the evidence that we received is tainted because of, but to actually say that there is no evidence what so ever makes the DPD appear to not have done their job in terms of presenting evidence or the same for the U.S. Attorney's office.

Chief Oliver stated I think that it is important to understand that the police department alone did not do anything. What did happen was that the FBI over a long period of time through an extensive investigation along with some of our people that turned over to the U.S. Attorney that put it before the Grand Jury.

Comm. Norris stated I was going to ask if something was something presented to the Grand Jury because the indictments came from the Grand Jury.

Chief Oliver stated we do feel very strongly that these are substantive cases and for someone to say that there is no evidence associated with they must have some more information that we don't have. AC Black has talked to Mike Duggan and recommended that this doesn't have to be a public...this is one of those things that people could have just talked to each other.

The other point that I wanted to mention is that today is a historic day. The arbitrator released the DPOA arbitration today. I got a chance to go through it somewhat. The Mayor had a press release and he announced today that he is pleased with the arbitrator's decision regarding raises for the DPOA. On Thursday an arbitrator decided on a 5% raise for Detroit police officers ending months of arbitration between the city and the police union. That decision means that the Detroit police officers would receive the raise effective immediately. However, officers would not receive retroactive raises for the past two years, so it is a 0, 0, 5 settlement.

In addition, the arbitrator's decision included an extra seat for the City on the Police and Fire Pension Board, which will bring more equity.

Comm. Norris asked was the promotional issue before this arbitrator the way it was for the Lieutenants and Sergeants?

Chief Oliver stated yes.

Comm. Norris asked did it reach the same result or would it have two different results?

Chief Oliver stated it is a little different, but it is close.

Chairperson Hampton asked was it Roumell?

Chief Oliver stated no, it was William Long.

Comm. Blackwell, II stated so the moral of the story is that you don't hate all arbitrators.

Comm. Vann asked were we negotiating 2%?

Chief Oliver stated no, the City's position was 3%.

Comm. Norris stated 0, 0, 3.

Chief Oliver stated it ended in 0, 0, 5.

Comm. Vann asked have you estimated the cost of the consent decree?

Chief Oliver stated I don't know.

Chairperson Hampton asked what is the status of the tazer demonstration that was cancelled due to the black out.

AC Black stated representatives from Tazer International are scheduled to give a presentation at an evening community meeting on September 18, 2003 at 6:30 p.m. and we are still trying to find a location with proper cooling.

7. ORAL COMMUNICATION FROM THE AUDIENCE

None.

8. ANNOUNCEMENT OF NEXT MEETING

Thursday, September 4, 2003 @ 3:00 p.m.
Police Headquarters, Rm. 328-A
1300 Beaubien
Detroit, Michigan 48226

9. ADJOURNMENT

Meeting was adjourned at 4:00 p.m.

Respectfully Submitted,

DANTE' L. GOSS
Executive Director
Board of Police Commissioners

DLG/kdw